

Laidlaw, Tina

From: Perkins, Erin
Sent: Thursday, March 20, 2014 10:55 AM
To: jnorth@mt.gov
Cc: Volk, Everett; Laidlaw, Tina
Subject: FW: Follow Up re. Variances/Permitting

Hi John –

I sent the following retraction email to you a few minutes ago, however it was bounced back as too large for the system. I am assuming that is because I attached a PDF of the proposed rule to you. Here is a link to the proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-04/pdf/2013-21140.pdf>

Thanks,

Erin

From: Perkins, Erin
Sent: Thursday, March 20, 2014 10:29 AM
To: 'jnorth@mt.gov'
Cc: Volk, Everett; Laidlaw, Tina
Subject: FW: Follow Up re. Variances/Permitting

Hi John,

As Tina Laidlaw told you we would be doing, we are retracting the email below regarding EPA's approach to variances in NPDES permits. We will be sending a revised version to you. In the meantime, please see the attached EPA documents that explain the role variances play in NPDES permitting. The discussion in the Multiple Discharger Variance FAQs on page 2 (see link below) should be helpful. In addition EPA's proposed Water Quality Standards Regulatory Clarifications which were published on Sept. 4, 2013 also discuss variances. I have attached the Federal Register notice (78 Fed. Reg. 54518 (Sept. 4, 2013)). You can find the variance discussion beginning on page 54531.

<http://water.epa.gov/scitech/swguidance/standards/upload/Discharger-specific-Variances-on-a-Broader-Scale-Developing-Credible-Rationales-for-Variances-that-Apply-to-Multiple-Dischargers-Frequently-Asked-Questions.pdf>

Please contact either Everett or me if you have any questions.

Thanks,

Erin

From: Perkins, Erin
Sent: Monday, March 03, 2014 12:51 PM
To: 'jnorth@mt.gov'
Cc: Volk, Everett; Laidlaw, Tina
Subject: Follow Up re. Variances/Permitting

Hi John,

Based on a recent conversation with you, we understand it would be helpful for MDEQ to understand the approach that EPA takes with respect to variances adopted into NPDES permits.

Section 301(b)(1)(C) of the CWA requires states to issue NPDES permits that include limitations necessary to meet applicable state water quality standards. Variances change applicable water quality criteria for limited periods of time and are approved by EPA after consideration of the regulatory requirements in 40 CFR Part 131. Once a variance has been approved by EPA, the variance criteria are the applicable state water quality standards during the term of the variance, including for the purposes of writing NPDES permits. When the State subsequently writes a NPDES permit, it must ensure that it includes water quality based effluent limits (WQBELs) that derive from and comply with those criteria. 40 CFR 122.44(d)(1)(vii)(A). As long as the variance is validly adopted and approved by EPA, EPA would not have the grounds to object to the issuance of the permit that includes the WQBELs based on the variance. (The grounds for permit objections are defined at 40 CFR 123.44(c), and include the failure of effluent limits to satisfy the requirements of 40 CFR 122.44(d)). The WQBELs that are included in the permit would generally remain in the permit for the duration of the permit term.

Please give me a call at (303) 312-6922 or Everett Volk at (303) 312-7290 if you have questions.

Thanks,

Erin